

## Internal Revenue Service

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### Legend

Parent =

Sub 1 =

Sub 2 =

Sub 3 =

Sub 4 =

FSub 1 =

FSub 2 =

FSub 3 =

FSub 4 =

F-Partnership =

DE 1 =

DE 2 =

Distributing =

F-Controlled =

Country X =

Country Y =

Country Z =

Business A =

Business A1 =

a =

b =

Parent Affiliated Group =

Sub 4 Integration Plan =

Date 1 =

Dear

This letter responds to your March 20, 2009 request for rulings regarding certain federal income tax consequences of a Proposed Transaction (as defined below). The information submitted in that request and in later correspondence is summarized below.

The rulings contained in this letter are based on facts and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. This office has not verified any of the material submitted in support of the request for rulings. Verification of the information, representations, and other data may be required as part of the audit process. Moreover, this office has not reviewed any information pertaining to, and has made no determination regarding whether the Distribution (as defined below): (i) satisfies the business purpose requirement of § 1.355-2(b) of the Income Tax Regulations, (ii) is being used principally as a device for the distribution of the earnings and profits of any distributing corporation or controlled corporation (see § 355(a)(1)(B) of the Internal Revenue Code (the "Code") and § 1.355-2(d)), or (iii) is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in any distributing corporation or controlled corporation (see § 355(e) and § 1.355-7).

#### Summary of Facts

Parent, a publicly-traded corporation, is the common parent of an affiliated group of corporations that files a consolidated federal income tax return and through its

affiliates engages in Business A and Business A1. Parent owns all of the outstanding common stock of Sub 1 and Sub 4. Sub 1 owns all of the outstanding common stock of Sub 2 and through direct and indirect ownership, all of the outstanding common stock of Distributing, a Country Y corporation. Sub 2 owns all of the outstanding common stock of Sub 3. Sub 3 owns a percent (greater than 80 percent) of the common stock of FSub 1, a Country Y corporation that has elected to be taxed as an association for federal income tax purposes.

Each of Sub 1, Sub 2, and Sub 3 has issued and outstanding classes of voting preferred stock, all of which is owned by various entities in the Parent Affiliated Group.

Sub 4 owns all of the outstanding common stock of FSub 2, a Country Y corporation. FSub 2 owns, through other disregarded entities, all of the stock of DE 2, a Country Z entity that is disregarded for federal income tax purposes.

Sub 4 was acquired in a qualified stock purchase prior to the Proposed Transaction. As part of the Sub 4 Integration Plan, Parent has integrated the assets of Sub 4 into the Parent Affiliated Group. At the time of Parent's acquisition of Sub 4 on Date 1, both Parent and Sub 4 were engaged in Business A.

Each of Sub 1, Sub 2, Sub 3 and Sub 4 join Parent in filing a consolidated federal income tax return.

Through their separate affiliated groups, both Distributing and FSub 2 are engaged in Business A and Business A1, respectively. Each of Distributing and FSub 2 rely on employees of certain affiliates in conducting Business A and Business A1, respectively.

Financial information has been submitted for both Distributing and FSub 2 which indicates that Business A and Business A1 each has had gross receipts and operating expenses representing the active conduct of a trade or business for each of the past five years.

### Proposed Transaction

Management of Parent desires to fully align and integrate the active businesses of Sub 4 and its affiliates with the active businesses of Parent and its affiliates. Accordingly, to accomplish this and serve what the taxpayer has represented are valid business reasons, the following transactions have been proposed (collectively, the "Proposed Transaction"):

(i) Parent will contribute the stock of Sub 4 to Sub 1 in exchange for Sub 1 stock ("Contribution 1"). Immediately thereafter, and as part of an integrated plan, Sub 4 will merge into Sub 1 (collectively, "Reorganization 1").

(ii) Sub 1 will contribute the stock of FSub 2 to Distributing in exchange for a deemed issuance of Distributing stock ("Contribution 2"), after which FSub 2 will elect, as part of the same integrated plan, to be disregarded as an entity separate from its owner for U.S. federal income tax purposes (collectively, "Reorganization 2").

(iii) Distributing will form DE 1 (an entity disregarded from its sole owner for federal income tax purposes) with nominal capital and will contribute a note to DE 1 in exchange for additional interests in DE 1.

(iv) DE 1 will use the note to purchase b from certain disregarded entities of Distributing.

(v) Distributing will form F-Controlled as a Country X corporation and will contribute all its interest in DE 1 to F-Controlled in exchange for F-Controlled stock (the "F-Controlled Contribution"). Distributing will distribute the F-Controlled stock to Sub 1 (the "Distribution") (the Distribution and the F-Controlled Contribution, collectively "Reorganization 3"). In connection with the Distribution, Distributing and F-Controlled will enter into various agreements relating to research and development, management, accounting, and general administrative activities.

(vi) Sub 1 will transfer the F-Controlled stock to FSub 1 in exchange for FSub 1 shares ("Contribution 3").

(vii) F-Controlled will elect to be disregarded as an entity separate from its owner for federal income tax purposes. Steps (vi) and (vii) will be referred to as "Reorganization 4."

(viii) Sub 1 will contribute the shares of FSub 1 received in Reorganization 4 to Sub 2 in exchange for Sub 2 stock ("Contribution 4"). Sub 2 will transfer the FSub 1 stock to Sub 3 in exchange for Sub 3 stock ("Contribution 5").

(ix) FSub 1 will form FSub 3 and FSub 4, both of which will be organized in Country Y and taxable as associations for federal income tax purposes. FSub 1, FSub 3 and FSub 4 will form F-Partnership as a Country Y entity that will be treated as a partnership for federal income tax purposes. FSub 1 will transfer all the assets of F-Controlled to F Sub 3, which in turn, will transfer the F-Controlled assets to F-Partnership for additional partnership units.

## Representations

The following representations have been submitted regarding each named transaction:

*Reorganization 1*

- (a) The fair market value of the Sub 1 stock received by Parent will be approximately equal to the fair market value of the Sub 4 stock surrendered in Reorganization 1.
- (b) Sub 1 will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by Sub 4 immediately prior to the Reorganization 1. For purposes of this representation, amounts paid by Sub 4 to dissenters, amounts paid by Sub 4 to shareholders who receive cash or other property, amounts used by Sub 4 to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Sub 4 immediately preceding the transfer will be included as assets of Sub 4 held immediately before the transaction.
- (c) After Reorganization 1, Parent will be in control of Sub 1 within the meaning of § 368(a)(2)(H).
- (d) At least 40 percent of the proprietary interest in Sub 4 will be exchanged for stock of Sub 1 and will be preserved (within the meaning of § 1.368-1(e)).
- (e) Neither Sub 1 nor any person related to Sub 1 (within the meaning of § 1.368-1(e)(3)) has any plan or intention to reacquire any Sub 1 stock issued in Reorganization 1.
- (f) Sub 1 has no plan or intention to sell or otherwise dispose of any of the assets of Sub 4 acquired in the Reorganization 1, except for transfers as discussed herein and dispositions made in the ordinary course of business.
- (g) The liabilities of Sub 4 assumed (as determined under § 357(d)) by Sub 1 and the liabilities, if any, to which the transferred assets are subject were incurred by Sub 4 in the ordinary course of business and are associated with the assets transferred.
- ((h) Following Reorganization 1, Sub 1, or a member of Sub 1's qualified group (as defined in § 1.368-1(d)(4)(ii)), will continue the historic business of Sub 4 or use a significant portion of Sub 4's historic business assets in a business.
- (i) At the time of Reorganization 1, Sub 1 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Sub 1 that, if exercised or converted, would affect the acquisition or retention of control (as defined in § 368(a)(2)(H)) of Sub 1 by Parent.

(j) Sub 1, Sub 4 and Parent will each pay their respective expenses, if any, incurred in connection with Reorganization 1.

(k) There is no intercorporate debt existing between Sub 1 and Sub 4 that was issued, acquired, or will be settled at a discount.

(l) No two parties to Reorganization 1 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(m) The fair market value of the assets of Sub 4 transferred to Sub 1 will equal or exceed the sum of the liabilities of Sub 4 to be assumed (as determined under § 357(d)) by Sub 1, plus the amount of liabilities, if any, to which the transferred assets are subject.

(n) Sub 4 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(o) To the extent that Sub 4 was the U.S. transferor with respect to any existing gain recognition agreements, Parent will comply with the regulations under § 1.367(a)-8.

### *Reorganization 2*

(p) Distributing will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by FSub 2 immediately prior to the Reorganization 2. For purposes of this representation, amounts paid by FSub 2 to dissenters, amounts paid by FSub 2 to shareholders who receive cash or other property, amounts used by FSub 2 to pay its reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by FSub 2 immediately preceding the transfer will be included as assets of FSub 2 held immediately before the transaction.

(q) After Reorganization 2, Sub 1 will be in control of Distributing within the meaning of § 368(a)(2)(H).

(r) At least 40 percent of the proprietary interest in FSub 2 will be exchanged for stock of Distributing and will be preserved (within the meaning of § 1.368-1(e)).

(s) Neither Distributing nor any person related to Distributing (within the meaning of § 1.368-1(e)(3)) has any plan or intention to reacquire any Distributing stock issued in Reorganization 2.

(t) Distributing has no plan or intention to sell or otherwise dispose of any of the assets of FSub 2 acquired in the Reorganization 2, except for transfers as discussed herein and dispositions made in the ordinary course of business.

(u) The liabilities of FSub 2 assumed (as determined under § 357(d)) by Distributing) and the liabilities, if any, to which the transferred assets are subject were incurred by FSub 2 in the ordinary course of business and are associated with the assets transferred.

(v) Following Reorganization 2, Distributing, or a member of [Distributing]'s qualified group (as defined in § 1.368-1(d)(4)(ii)), will continue the historic business of FSub 2 or use a significant portion of FSub 2's historic business assets in a business.

(w) At the time of Reorganization 2, Distributing will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in Distributing that, if exercised or converted, would affect the acquisition or retention of control (as defined in § 368(a)(2)(H)) of Distributing by Sub 1.

(x) Distributing, FSub 2 and Sub 1 will each pay their respective expenses, if any, incurred in connection with Reorganization 2.

(y) There is no intercorporate debt existing between Distributing and FSub 2 that was issued, acquired, or will be settled at a discount.

(z) No two parties to Reorganization 2 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(aa) The fair market value of the assets of FSub 2 transferred to Distributing will equal or exceed the sum of the liabilities of FSub 2 to be assumed (as determined under § 357(d)) by Distributing, plus the amount of liabilities, if any, to which the transferred assets are subject.

(bb) FSub 2 is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(cc) Distributing and FSub 2 will be controlled foreign corporations, within the meaning of § 957(a), immediately before, and Distributing will continue to be a controlled foreign corporation, within the meaning of § 957(a), after Reorganization 2.

(dd) Neither Distributing nor FSub 2 is a passive foreign investment company.



(ee) Sub1 will be a § 1248 shareholder, within the meaning of § 1.367(b)-2(b), with respect to Distributing, immediately before and after Reorganization 2.

(ff) The notice requirements of § 1.367(b)-1(c) will be satisfied with respect to Reorganization 2.

(gg) Reorganization 2 is not an exchange described in §§ 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i) or 1.367(b)-4(b)(3).

(hh) Reorganization 2 will not include the transfer of stock in any corporation that has been a U.S. transferee foreign corporation, or the transferred corporation with respect to any unexpired "gain recognition agreement" within the meaning of §§ 1.367(a)-3 and 1.367(a)-8.

(ii) FSub2 will not hold any United States real property interests, as defined in § 897(c)(1), immediately before Reorganization 2.

### *Reorganization 3 and the Distribution*

(jj) Indebtedness, if any, owed by F-Controlled to Distributing after the Distribution will not constitute stock or securities.

(kk) No part of F-Controlled stock to be distributed by Distributing will be received by a shareholder as a creditor, employee, or in any capacity other than that of a shareholder of Distributing.

(ll) The five years of financial information submitted on behalf of Business A (as conducted by Distributing or its separate affiliated group) is representative of the present operations of Business A (as conducted by Distributing) and, with regard to such business, there have been no substantial operational changes since the date of the last financial statement submitted.

(mm) The five years of financial information submitted on behalf of Business A1 (as will be conducted by F-Controlled or its separate affiliated group) is representative of the present operations of Business A1 and, with regard to such business, there have been no substantial operational changes since the date of the last financial statement submitted.

(nn) Following the Distribution, Distributing and F-Controlled will continue the active conduct of their respective businesses, independently and with their separate employees or employees of their affiliates.

(oo) The Distribution is being undertaken for the corporate business purposes of aligning similar business functions and integration of the acquired business of Sub 4. The Distribution is motivated, in whole or substantial part, by this corporate business purpose.

(pp) Neither Distributing's Business A, nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part except in connection with the expansion of an existing five-year trade or business. Throughout the 5 year period Distributing has been the principal owner of the goodwill and significant assets of Business A and will continue to be such owner following the Distribution.

(qq) Neither F-Controlled's Business A1, nor control of an entity conducting this business was acquired during the five-year period ending on the date of the Distribution in a transaction in which gain or loss was recognized (or treated as recognized) in whole or in part, except in connection with the expansion of an existing five-year trade or business. Throughout the 5 year period F-Controlled has been the principal owner of the goodwill and significant assets of Business A1 and will continue to be such owner following the Distribution.

(rr) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing fifty percent or more of the total combined voting power of all classes of Distributing stock entitled to vote, or fifty percent or more of the total value of all classes of Distributing stock, that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(ss) For purposes of § 355(d), immediately after the Distribution, no person (determined after applying § 355(d)(7)) will hold stock possessing fifty percent or more of the total combined voting power of all classes of F-Controlled stock entitled to vote, or fifty percent or more of the total value of all classes of F-Controlled stock, that was either (1) acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution or (2) attributable to distributions on Distributing stock that was acquired by purchase (as defined in §§ 355(d)(5) and (8)) during the five-year period (determined after applying § 355(d)(6)) ending on the date of the Distribution.

(tt) Immediately after the Distribution, neither Distributing nor F-Controlled will be a "disqualified investment corporation" as defined in § 355(g)(2).

(uu) The total adjusted basis and the fair market value of the assets transferred to FControlled by Distributing each equals or exceeds the sum of: (i) the total liabilities assumed (as determined under section 357(d)) by F-Controlled and (ii) the

total amount of money and other property (within the meaning of section 361(b)) received by Distributing and transferred by it to its creditors and shareholders in connection with the plan of reorganization. The liabilities assumed (as determined under section 357(d)) in Contribution 3 were incurred in the ordinary course of business and are associated with the transferred assets.

(vv) The fair market value of the assets transferred by Distributing to F-Controlled in the F-Controlled Contribution will equal or exceed the sum of: (i) the amount of any liabilities assumed (within the meaning of § 357(d)) by F-Controlled in the F Controlled Contribution, (ii) the amount of any liabilities owed to F-Controlled by Distributing (if any) that are discharged or extinguished in connection with the F-Controlled Contribution, and (iii) the amount of any cash and the fair market value of any property (other than stock and securities permitted to be received under § 361(a) without the recognition of gain) received by Distributing from F-Controlled in connection with the F-Controlled Contribution. The fair market value of the assets of F-Controlled will exceed the amount of its liabilities immediately after the F-Controlled Contribution.

(ww) Any liabilities assumed by F-Controlled (within the meaning of § 357(d)) in the F Controlled Contribution and any liabilities to which transferred assets in the F Controlled Contribution were subject were incurred in the ordinary course of business and are associated with the assets being transferred.

(xx) No two parties to the Distribution are investment companies as defined in §§ 368(a)(2)(F)(iii) and (iv).

(yy) Payments made in connection with any continuing transactions between Distributing and F-Controlled, if any, following the Distribution, will be at fair market value based on terms and conditions comparable to those that would be arrived at by the parties bargaining at arm's length.

(zz) Distributing and F-Controlled will each pay their own expenses, if any, incurred in connection with the Distribution.

(aaa) The Distribution is not part of a plan or series of related transactions (within the meaning of § 355(e)) pursuant to which one or more persons will acquire, directly or indirectly stock possessing 50 percent or more of the total combined voting power of all classes of stock of either Distributing or F-Controlled entitled to vote, or stock possessing 50 percent or more of the total value of all classes of stock of either Distributing or F-Controlled.

(bbb) No indebtedness between Distributing and F-Controlled has been or will be cancelled in connection with the Distribution.

(ccc) No intercorporate debt will exist between Distributing and F-Controlled at the time of, or after, the Distribution.

(ddd) The Distribution is not used principally as a device for the distribution of the earnings and profits of Distributing or F-Controlled or both.

(eee) Neither Distributing nor F-Controlled is a passive foreign investment company within the meaning of § 1297(a).

(fff) Distributing will be a controlled foreign corporation, within the meaning of § 957(a), immediately before and both Distributing and F-Controlled will be controlled foreign corporations, within the meaning of § 957(a), immediately after the Distribution.

(ggg) Sub 1 will be a § 1248 shareholder, within the meaning of § 1.367(b)-2(b), with respect to Distributing immediately before and after the Distribution and a § 1248 shareholder with respect to F-Controlled immediately after the Distribution.

(hhh) The notice requirements of § 1.367(b)-1(c) will be satisfied for the Distribution.

(iii) The Distribution is not an exchange described in §§ 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i) or 1.367(b)-4(b)(3).

(jjj) F-Controlled will not hold any United States real property interests, as defined in § 897(c)(1), immediately before or after the Distribution.

(kkk) The Distribution will not include the transfer of stock in any corporation that has been a U.S. transferor, the transferee foreign corporation, or the transferred corporation with respect to any unexpired 'gain recognition agreement' within the meaning of §§ 1.367(a)-3 and 1.367(a)-8.

#### *Reorganization 4*

(III) The fair market value of the FSub 1 stock received by Sub 1 will be approximately equal to the fair market value of the F-Controlled stock surrendered in Reorganization 4.

(mmm) FSub 1 will acquire at least 90 percent of the fair market value of the net assets and at least 70 percent of the fair market value of the gross assets held by F-Controlled immediately prior to the Reorganization 4. For purposes of this representation, amounts paid by FSub 1 to dissenters, amounts paid by FSub 1 to shareholders who receive cash or other property, amounts used by FSub 1 to pay its

reorganization expenses, and all redemptions and distributions (except for regular, normal dividends) made by Fub 1 immediately preceding the transfer will be included as assets of FSub 1 held immediately before the transaction.

(nnn) After Reorganization 4, Sub 1 will be in control of FSub 1 within the meaning of § 368(a)(2)(H).

(ooo) At least 40 percent of the proprietary interest in F-Controlled will be exchanged for stock of FSub 1 and will be preserved (within the meaning of § 1.368-1(e)).

(ppp) Neither FSub 1 nor any person related to FSub 1 (within the meaning of § 1.368-1(e)(3)) has any plan or intention to reacquire any FSub 1 stock issued in Reorganization 4.

(qqq) FSub 1 has no plan or intention to sell or otherwise dispose of any of the assets of F-Controlled acquired in the Reorganization 4, except for transfers as discussed herein and dispositions made in the ordinary course of business.

(rrr) The liabilities of F-Controlled assumed (as determined under § 357(d)) by FSub 1 and the liabilities, if any, to which the transferred assets are subject were incurred by F-Controlled in the ordinary course of business and are associated with the assets transferred.

(sss) Following Reorganization 4, FSub 1, or a member of FSub 1's qualified group (as defined in § 1.368-1(d)(4)(ii)), will continue the historic business of each of Sub 4 or use a significant portion of each of F-Controlled's historic business assets in a business.

(ttt) At the time of Reorganization 4, FSub 1 will not have outstanding any warrants, options, convertible securities, or any other type of right pursuant to which any person could acquire stock in FSub 1 that, if exercised or converted, would affect the acquisition or retention of control (as defined in § 368(a)(2)(H)) of FSub 1 by Sub 1.

(uuu) FSub 1, F-Controlled and Sub 1 will each pay their respective expenses, if any, incurred in connection with Reorganization 4.

(vvv) There is no intercorporate debt existing between FSub 1 and F-Controlled that was issued, acquired, or will be settled at a discount.

(www) No two parties to Reorganization 4 are investment companies as defined in § 368(a)(2)(F)(iii) and (iv).

(xxx) The fair market value of the assets of F-Controlled transferred to FSub 1 will equal or exceed the sum of the liabilities of F-Controlled to be assumed (as determined under § 357(d)) by FSub 1, plus the amount of liabilities, if any, to which the transferred assets are subject.

(yyy) F-Controlled is not under the jurisdiction of a court in a Title 11 or similar case within the meaning of § 368(a)(3)(A).

(zzz) FSub1 and F-Controlled will be controlled foreign corporations, within the meaning of § 957(a), immediately before, and FSub1 will continue to be a controlled foreign corporation, within the meaning of § 957(a), after Reorganization 4.

(aaaa) F-Controlled is not a passive foreign investment company within the meaning of § 1297(a).

(bbbb) Sub1 will be a § 1248 shareholder, within the meaning of § 1.367(b)-2(b), with respect to FSub1, immediately before and after Reorganization 4.

(cccc) The notice requirements of § 1.367(b)-1(c) will be satisfied with respect to Reorganization 4.

(dddd) Reorganization 4 is not an exchange described in §§ 1.367(b)-4(b)(1)(i), 1.367(b)-4(b)(2)(i) or 1.367(b)-4(b)(3).

(eeee) F-Controlled will not hold any United States real property interests, as defined in § 897(c)(1), immediately before Contribution 3.

(ffff) Reorganization 4 will not include the transfer of stock in any corporation that has been a U.S. transferor, the transferee foreign corporation, or the transferred corporation with respect to any unexpired 'gain recognition agreement' within the meaning of §§ 1.367(a)-3 and 1.367(a)-8.

(gggg) FSub 1's transfer of the assets of F-Controlled to FSub 3 will satisfy the requirements of § 351.

#### *Contribution 4*

(hhhh) No stock or securities will be issued for services rendered to or for the benefit of Sub 2 in connection with Contribution 4.

(iiii) No stock or securities will be issued for indebtedness of Sub 2 in connection with Contribution 4.

(jjjj) None of the stock to be transferred in Contribution 4 is "§ 306 stock" within the meaning of § 306(c).

(kkkk) FSub 1 is not a passive foreign investment company.

(llll) Contribution 4 is not the result of the solicitation by a promoter, broker, or investment house.

(mmmm) Sub 1 will not retain any rights in the property transferred to Sub 2 in connection with Contribution 4.

(nnnn) Sub 2 will not assume any liabilities in connection with the transfer of the shares of FSub 1.

(oooo) There is no indebtedness between the Sub 2 and Sub 1 related to Contribution 4 and there will be no indebtedness created in favor of Sub 1 as a result of Contribution 4.

(pppp) There is no plan or intention on the part of Sub 1 to redeem or otherwise reacquire any stock or indebtedness to be issued in Contribution 4.

(qqqq) Sub 1 will receive stock of Sub 2 approximately equal to the fair market value of the property transferred to Sub 2.

(rrrr) Each of the parties to Contribution 4 will pay its expenses, if any, incurred in connection with Contribution 4.

(ssss) Sub 2 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).

(tttt) Sub 2 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock received in the exchange will not be used to satisfy the indebtedness of such debtor.

(uuuu) Sub 2 is not a personal service corporation within the meaning of § 269A.

(vvvv) The Sub 2 preferred stock will not be nonqualified preferred stock within the meaning of § 351(g)(2).

(www) Sub 2 will remain in existence, immediately after Contribution 4.

(xxxx) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(yyyy) All exchanges will occur on approximately the same date.

(zzzz) Taking into account any issuance of additional shares of Sub 2 stock; any issuance of stock for services; exercise of any Sub 2 stock rights, warrants, or subscriptions; a public offering of Sub 2 stock; and the sale, exchange, transfer by gift, or other disposition of the Sub 2 stock to be received in the exchange, Sub 1 will own stock in Sub 2 representing control within the meaning of §§ 368(c) and 1504(a) immediately after Contribution 4. Sub 2 does not plan or intend to issue additional shares after Contribution 4 that would result in Sub 1 losing § 368(c) control of Sub 2.

### *Contribution 5*

(aaaaa) No stock or securities will be issued for services rendered to or for the benefit of Sub 3 in connection with Contribution 5.

(bbbbb) No stock or securities will be issued for indebtedness of Sub 3 in connection with Contribution 5.

(ccccc) None of the stock to be transferred in Contribution 5 is "§ 306 stock" within the meaning of § 306(c).

(ddddd) FSub 1 is not a passive foreign investment company.

(eeeee) Contribution 5 is not the result of the solicitation by a promoter, broker, or investment house.

(fffff) Sub 2 will not retain any rights in the property transferred to Sub 2 in connection with Contribution 5.

(ggggg) Sub 3 will not assume any liabilities in connection with the transfer of the shares of FSub 1.

(hhhhh) There is no indebtedness between Sub 3 and Sub 2 related to Contribution 5 and there will be no indebtedness created in favor of Sub 2 as a result of Contribution 5.

(iiii) There is no plan or intention on the part of Sub 2 to redeem or otherwise reacquire any stock or indebtedness to be issued in Contribution 4.

(jjjjj) Sub 2 will receive stock of Sub 3 approximately equal to the fair market value of the property transferred to Sub 3.



(kkkkk) Each of the parties to Contribution 5 will pay its expenses, if any, incurred in connection with Contribution 5.

(lllll) Sub 3 will not be an investment company within the meaning of § 351(e)(1) and § 1.351-1(c)(1)(ii).

(mmmmm) Sub 3 is not under the jurisdiction of a court in a title 11 or similar case (within the meaning of § 368(a)(3)(A)) and the stock received in the exchange will not be used to satisfy the indebtedness of such debtor.

(nnnnn) Sub 3 is not a personal service corporation within the meaning of § 269A.

(ooooo) Sub 3 will remain in existence, immediately after Contribution 5.

(ppppp) Taking into account any issuance of additional shares of Sub 3 stock; any issuance of stock for services; exercise of any Sub 3 stock rights, warrants, or subscriptions; a public offering of Sub 3 stock; and the sale, exchange, transfer by gift, or other disposition of the Sub 3 stock to be received in the exchange Sub 2 will own stock in Sub 3 representing control within the meaning of §§ 368(c) and 1504(a) immediately after Contribution 5. Sub 3 does not plan or intend to issue additional shares after Contribution 5 that would result in Sub 2 losing § 368(c) control of Sub 3.

(qqqqq) The transfers and exchanges will occur under a plan agreed upon before the transaction in which the rights of the parties are defined.

(rrrrr) All exchanges will occur on approximately the same date.

(sssss) The Sub 3 preferred stock will not be nonqualified preferred stock within the meaning of § 351(g)(2).

### Rulings

Based solely on the information submitted and representations set forth above, we rule as follows regarding each named transaction:

#### *Reorganization 1*

(1) For federal tax purposes, Reorganization 1 will be treated as: (i) a transfer of substantially all of Sub 4's assets to Sub 1 in exchange for Sub 1 stock; and (ii) the distribution of Sub 1 stock in complete liquidation of Sub 4.

(2) As a result of Reorganization 1, Sub 1's acquisition of substantially all of Sub 4's assets deemed to be exchanged solely for Sub 1 stock, will be treated as a

reorganization within the meaning of § 368(a)(1)(D). Sub 1 and Sub 4 will each be a "party to a reorganization" within the meaning of § 368(b).

(3) No gain or loss will be recognized by Sub 4 upon the transfer of all its assets to Sub 1 in deemed exchange for Sub 1 stock and the assumption by Sub 1 of Sub 4's liabilities (§§ 361(a), 357(a) and § 1.1502-80).

(4) No gain or loss will be recognized by Sub 1 upon its receipt of Sub 4's assets (§ 1032(a)).

(5) The basis of each asset of Sub 4 in the hands of Sub 1 will be the same as the basis of that asset in the hands of Sub 4 immediately prior to its transfer (§ 362(b)).

(6) The holding period of each asset of Sub 4 in the hands of Sub 1 will be the same as the holding period of that asset in the hands of Sub 4 (§ 1223(2)).

(7) No gain or loss will be recognized on the deemed distribution of Sub 1 stock to Parent (§ 361(c)(1)).

(8) No gain or loss will be recognized by Parent upon its deemed exchange of Sub 4 stock for Sub 1 stock (§ 354(a)(1)).

(9) The basis of the Sub 1 stock deemed received by Parent will be the same as the basis of the Sub 4 stock exchanged by Parent (§ 358(a)).

### *Reorganization 2*

(10) For federal tax purposes, Reorganization 2 will be treated as: (i) a transfer of substantially all of FSub 2 assets to Distributing in exchange for Distributing stock and (ii) the distribution of Distributing stock to Sub 1 in complete liquidation of FSub 2.

(11) As a result of Reorganization 2, Distributing's acquisition of substantially all of FSub 2's assets deemed to be exchanged solely for Distributing stock, will be treated as a reorganization within the meaning of § 368(a)(1)(D). Distributing and FSub 2 will each be a "party to a reorganization" within the meaning of § 368(b).

(12) No gain or loss will be recognized by FSub 2 on the transfer of all its assets to Distributing in deemed exchange for Distributing stock and the assumption by Distributing of FSub 2's liabilities (§§ 361(a) and 357(a)).

(13) No gain or loss will be recognized by Distributing on the receipt of FSub 2's assets (§ 1032(a)).

(14) The basis of each asset of FSub 2 in the hands of Distributing will be the same as the basis of that asset in the hands of FSub 2 immediately prior to its transfer (§ 362(b)).

(15) The holding period of each asset of FSub 2 in the hands of Distributing will be the same as the holding period of that asset in the hands of FSub 2 (§ 1223(2)).

(16) No gain or loss will be recognized on the deemed distribution of Distributing stock to Sub 1 (§ 361(c)(1)).

(17) No gain or loss will be recognized by Sub 1 on its deemed exchange of FSub 2 stock for Distributing stock (§ 354(a)(1)).

(18) The basis of the Distributing stock deemed received by Sub 1 will be the same as the basis of the FSub 2 stock exchanged by Sub 1 (§ 358(a)).

(19) FSub 2's transfer of substantially all its assets to Distributing will be an exchange to which §§ 1.367(b)-1(c) and -(4)(a) apply.

(20) No amount will be included in income as a deemed dividend equal to the § 1248 amount under § 367(b) as a result of Contribution 2 (§ 1.367(b)-1(b) and -(4)(b)).

#### *Reorganization 3 and the Distribution*

(21) The F-Controlled Contribution followed by the Distribution will be a reorganization within the meaning of § 368(a)(1)(D). Distributing and F-Controlled will each be a "party to a reorganization" within the meaning of § 368(b).

(22) No gain or loss will be recognized by Distributing on the F-Controlled Contribution (§ 361(a)).

(23) No gain or loss will be recognized by F-Controlled on the F-Controlled Contribution (§ 1032(a)).

(24) The basis of each asset received by F-Controlled from Distributing will equal Distributing's basis in that asset immediately before its transfer (§ 362(b)).

(25) The holding period of each asset received by F-Controlled will include the period Distributing held the asset (§ 1223(2)).

(26) No gain or loss will be recognized by (and no amount will be included in the income of) Sub 1 on its receipt of the F-Controlled stock (§ 355(a)(1)).

(27) No gain or loss will be recognized by Distributing in the Distribution (§361(c)(1)).

(28) Sub 1's basis in a share of Distributing stock (as adjusted under § 1.358-1) will be allocated between the share of Distributing stock with respect to which the Distribution will be made and the shares of F-Controlled stock received with respect to the share of Distributing stock in proportion to their fair market values in accordance with § 1.358-2 (§§ 358(b) and (c)).

(29) Sub 1's holding period of the F-Controlled stock received will include the holding period of the Distributing stock with respect to which the Distribution will be made, provided the Distributing stock is held as a capital asset on the date of the Distribution (§ 1223(1)).

(30) Earnings and profits will be allocated between Distributing and F-Controlled in accordance with § 1.312-10(a).

(31) The F-Controlled Contribution will be an exchange to which §§ 1.367(b)-1(c) and -4(a) apply.

(32) No amount will be included in income as a deemed dividend equal to the § 1248 amount under § 367(b) as a result of the F-Controlled Contribution (§ 1.367(b)-1(b) and -4(b)).

(33) The Distribution will be an exchange to which §§ 1.367(b)-1(c), -5(a), -5(c), and -5(f) apply. If Sub 1's post-distribution amount (as defined in § 1.367(b)-5(e)(2)) with respect to Distributing or F-Controlled is less than its pre-distribution amount (as defined in § 1.367(b)-5(e)(1)) with respect to Distributing or F-Controlled, Sub 1's basis in such stock immediately after the distribution must be reduced by the amount of the difference. However, Sub 1's basis in such stock must not be reduced below zero, and to the extent the foregoing reduction would reduce its basis below zero, Sub 1 must instead include such amount in income as deemed dividend from such corporation. If Sub 1 reduces the basis in the stock of Distributing or F-Controlled (or has an inclusion with respect to such stock), Sub 1 must increase its basis in the stock or the other corporation to the extent provided in § 1.367(b)-5(c)(4).

#### *Reorganization 4*

(34) For federal tax purposes, Reorganization 4 will be treated as; (i) a transfer of substantially all of F-Controlled's assets to FSub 1 in exchange for FSub 1 stock; and (ii) the distribution of FSub 1 stock in complete liquidation of F-Controlled.

(35) As a result of Reorganization 4, FSub 1's acquisition of substantially all of F-Controlled's assets deemed to be exchanged solely for FSub 1 stock, will be treated as a reorganization within the meaning of § 368(a)(1)(D). FSub 1 and F-Controlled will each be a "party to a reorganization" within the meaning of § 368(b).

(36) No gain or loss will be recognized by F-Controlled on the transfer of all its assets to FSub 1 in exchange for FSub 1 stock and the assumption by FSub 1 of F-Controlled's liabilities (§§ 361(a) and 357(a)).

(37) No gain or loss will be recognized by FSub 1 on its receipt of F-Controlled's assets (§ 1032(a)).

(38) The basis of each asset of F-Controlled in the hands of FSub 1 will be the same as the basis of that asset in the hands of F-Controlled immediately before its transfer (§ 362(b)).

(39) The holding period of each asset of F-Controlled in the hands of FSub 1 will be the same as the holding period of that asset in the hands of F-Controlled (§ 1223(2)).

(40) No gain or loss will be recognized by F-Controlled on the deemed distribution of FSub 1 stock to Sub 1 (§ 361(c)(1)).

(41) No gain or loss will be recognized by Sub 1 on its deemed exchange of F-Controlled stock for FSub 1 stock (§ 354(a)(1)).

(42) The basis of the FSub 1 stock deemed to be received by Sub 1 will be the same as the basis of the F-Controlled stock exchanged by Sub 1 (§ 358(a)).

(43) Following the transfer of all of F-Controlled's assets to FSub 3, all of F-Controlled's earnings and profits will be allocated to FSub 3 (§ 381).

(44) F-Controlled's transfer of substantially all its assets to FSub 1 will be an exchange to which §§ 1.367(b)-1(c) and -(4)(a) apply.

(45) No amount will be included in income as a deemed dividend equal to the § 1248 amount under § 367(b) as a result of Contribution 3 (§ 1.367(b)-1(b) and -(4)(b)).

#### *Contribution 4*

(46) No gain or loss will be recognized on the transfer of FSub 1 stock to Sub 2 by Sub 1 (§ 351(a)).

(47) The basis of the FSub 1 shares received by Sub 2 will be the same as the basis of such property in the hands of Sub 1 immediately prior to the transfer (§ 362(a)).

(48) No gain or loss will be recognized by Sub 2 on its receipt of FSub 1 stock (§ 1032).

(49) The basis of the Sub 2 stock received by Sub 1 in Contribution 4 will be the same as the basis of the FSub 1 transferred to Sub 2 (§ 358(a)).

(50) The holding period of the FSub 1 stock received by Sub 2 will include the period during which Sub 1 held the FSub 1 stock (§ 1223(1)).

(51) The holding period of the FSub 1 stock transferred to Sub 2 in Contribution 4 will include the period during which the FSub 1 stock was held by Sub 1 (§ 1223(2)).

#### *Contribution 5*

(49) No gain or loss will be recognized on the transfer of FSub 1 stock to Sub 3 by Sub 2 (§ 351(a)).

(50) The basis of the FSub 1 shares received by Sub 3 will be the same as the basis of such property in the hands of Sub 2 immediately prior to the transfer (§ 362(a)).

(51) No gain or loss will be recognized by Sub 3 on its receipt of FSub 1 stock (§ 1032).

(52) The basis of the Sub 3 stock received by Sub 2 in Contribution 5 will be the same as the basis of the FSub 1 transferred to Sub 3 (§ 358(a)).

(53) The holding period of the FSub 1 stock received by Sub 3 will include the period during which Sub 2 held the FSub 1 stock (§ 1223(1)).

(54) The holding period of the FSub 1 stock transferred to Sub 3 in Contribution 5 will include the period during which the FSub 1 stock was held by Sub 2 (§ 1223(2)).

#### **Caveats**

No opinion is expressed about the tax treatment of the Proposed Transaction under other provisions of the Code and regulations or the tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction that are not specifically covered by the above rulings.

In particular, we express no opinion regarding: (i) whether the Distribution satisfies the business purpose requirement of § 1.355-2(b); (ii) whether the Distribution is being used principally as a device for the distribution of the earnings and profits of the distributing corporation, the controlled corporation, or both (see § 355(a)(1)(B) and § 1.355-2(d)); and (iii) whether the Distribution is part of a plan (or series of related transactions) pursuant to which one or more persons will acquire directly or indirectly stock representing a 50 percent or greater interest in the distributing corporation or the controlled corporation (see § 355(e) and § 1.355-7).

In addition, we express no opinion about:

(i) the federal income tax consequences of the transactions described in steps (iii), (iv), and (ix) above,

(ii) the adjustments to earnings and profits or deficits in earnings and profits, if any, in any of the transactions to which § 367 applies (to the extent not otherwise specifically ruled upon above),

(iii) any other consequences under § 367 on any internal restructuring transaction in this ruling letter (to the extent not otherwise specifically ruled upon above), and

(iv) the federal income tax treatment of any conditions existing at the time of, or effects resulting from, the Proposed Transaction, including the potential application of § 482 to the Proposed Transaction.

#### Procedural Matters

This ruling letter is directed only to the taxpayer who requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

A copy of this letter must be attached to any income return for which it is relevant. Alternatively, any taxpayer filing its return electronically may satisfy this requirement by attaching a statement to the return that provides the date and control number of this letter ruling.

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

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Richard K. Passales  
Senior Counsel, Branch 4  
Office of Associate Chief Counsel  
(Corporate)